

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

MEMORANDUM

TO: John Robertus

FROM: Sherrie Komeylyan, WRCE
SAN DIEGO REGIONAL WATER QUALITY CONTROL BOARD

DATE: December 5, 2002

SUBJECT: KINDER MORGAN ENERGY PARTNERS – MISSION VALLEY
TERMINALS ASSESSMENT OF ADMINISTRATIVE CIVIL LIABILITY
WITH MANDATORY MINIMUM PENALTIES
RESPONSE TO COMMENTS REGARDING TENTATIVE ORDER NO.
R9-2002-0385
ITEM NO. 10

The Regional Board received a comment letter from Kinder Morgan Energy Partners, L.P. dated November 27, 2002 and received on December 4, 2002. The identification of the comments in this memorandum attempt to follow the numbering regime in the comment letter. Brief paraphrases of the concerns listed in the letter and staff's response are provided below. The original letter should be reviewed to ensure complete understanding of the comments and to ensure accurate summarization of the comments.

Kinder Morgan Energy Partners, L.P. Letter dated November 27, 2002:

General Comment

Comment: The frequency of the toxicity tests was increased to two times per month upon receipt of the toxicity test results for the March 18-22, 2002 study dates. Test results from the increased toxicity testing schedule were subsequently monitored in an effort to determine whether the violations developed a pattern of consistency or were isolated and random. Once it was determined that the chronic toxicity violations appeared to be consistent in nature, arrangements were made with the testing laboratory to perform a Toxicity Identification Evaluation (TIE) in an effort to identify the source of the toxicity. Kinder Morgan voluntarily initiated the TIE process without waiting for the Regional Board staff to first determine that the toxicity test results showed consistent violations of the applicable toxicity limitations identified in Discharge Specification B.4 of the Order.

Response: Pursuant to Provision G.36 of Order No. 2001-96 once toxicity testing results show a violation of any acute or chronic toxicity limitation, the Enrollee (Kinder Morgan) shall: 1) take all reasonable measures necessary to immediately

minimize toxicity and 2) increase the frequency of the toxicity test(s) which showed a violation to at least two times per month until the results of at least two consecutive toxicity tests do not show violations.

It is appropriate to assess penalties for each violation reported by the discharger. The penalties were properly assessed pursuant to California Water Code section 13385 (h) and (i).

Comment: Chapter 3, Section A, Paragraph (e) of the State Water Resources Control Board's, Water Quality Enforcement Policy (dated February 19, 2002) states that: "Violations of receiving water limits will not be considered priority violations if the NPDES permit contains requirements for responding to receiving water violations by investigating the cause of the violation; the facility is in compliance with those requirements; and the facility takes necessary action to ensure that its effluent does not cause or contribute to future violations of receiving water limits."

Response: The above paragraph is in reference to violations of receiving water limits. The violations specified in Table 1 are violations of effluent limitations established by Order No. 2001-96.

Requested Regional Board Actions

Comment: Rescind or reduce all of the mandatory minimum penalties presented in Complaint No. R9-2002-0205 based on the following circumstances:

- a. Upon learning of the initial toxicity violations in March 2002, the discharger has been proceeding in a "good-faith effort" in pursuing the prescribed investigative and corrective actions specified in Order No. 2001-96 – including the voluntary initiation of the toxicity Identification Evaluation (TIE) process,
- b. As specified by Chapter 3, Section A, Paragraph (e) of the State Water Resources Control Board's, Water Quality Enforcement Policy, the violations should not be considered priority since the NPDES permit contains requirements for responding to receiving water violations by investigating the cause of the violations,
- c. RWQCB staff concur that the facility is in compliance with the response requirements contained in the NPDES permit, and
- d. That upon determining the cause of the violations, the facility will take necessary action to ensure that its effluent does not cause or contribute to future violations of receiving water limits.

Response:

- a. See previous comments.
- b. See previous comments.
- c. The discharger may be meeting the minimum requirements specified in Order No. 2001-96, however, the discharger continues to discharge large volumes (up to 200,000 gallons per day) of extracted groundwater that is toxic. It is staff's understanding that the discharge will continue while the TIE is in progress. Staff is not convinced that the discharger is seriously pursuing alternative methods of disposal.
- d. See comment above.

Comment: Rescind or reduce the mandatory minimum penalties presented in Complaint No. R9-2002-0205 which are a result of violations reported because of the increased frequency of toxicity testing. While the objective of the increased toxicity testing prescribed by Order No. 2001-96 appears to be intended to provide additional toxicity monitoring and evaluation data, it also results in a dramatic increase in the number of violations that are reported and the subsequent penalties issued as a result of the increased number of violations.

Response: The higher frequency of testing is required to determine the extent of the violation and to aid in determining when compliance has been achieved. However, to reduce the burden on the discharger of continuously sampling at the higher rate, the Regional Board has reduced the frequency until a violation is discovered. This is a statistically sound sampling procedure and does an adequate job of balancing our need for monitoring with the associated cost and burden on the discharger.

An MMP must be assessed when sampling data indicates there has been a violation.

Comment: Defer all of the mandatory minimum penalties presented in Complaint No. R9-2002-0205 for eventual waiving or reduction provided that the discharger continues to pursue a "good-faith effort" to achieve consistent compliance with Order No. 2001-96.

Response: Comment noted.